The Special Meeting of the American Peace Society.

We call attention again to the special meeting of the American Peace Society at the New Willard Hotel, Washington, D. C., December 8, at 10 o'clock A. M. The purpose of the meeting was given in the November ADVOCATE OF PEACE.

In the evening of the same day a public mass-meeting will be held at 8 o'clock in the hall of the Pan-American Union Building. This meeting will be one of the series to be held in different cities under the auspices of the Citizens' National Committee recently organized in New York for the promotion of the ratification of the arbitration treaties. The speakers at the Washington meeting will be Senator Theodore E. Burton; Dean George W. Kirchwey, of the Columbia Law School; Senator John Sharp Williams; Hon. Richard Bartholdt, president of the Interparliamentary Group in Congress; Hon. S. Shimada, a distinguished member of the Japanese Parliament, and Hon. David J. Foster, former chairman of the House Committee on Foreign Affairs. President Taft has been invited, and expects to attend.

Ex-Senator Edmunds Unable to Agree with the Majority of the Senate Committee on Foreign Affairs.

The following letter from Ex-Senator George F. Edmunds, of Vermont, was received early last month by Dr. James L. Tryon, secretary of the Massachusetts Peace Society, who had asked for his opinion on the constitutionality of the commission of inquiry provision of the arbitration treaties now before the Senate:

841 SOUTH ORANGE GROVE AVENUE,
PASADENA, CAL., *October* 25, 1911.

DEAR SIR: Your letter of the third instant reached me about a week ago, asking my views on the subject of "The constitutionality of the clause giving to the International Commission of Inquiry the power to determine whether or not a given case is justiciable," as it appears in the draft of the treaty between Great Britain and our country now pending in the Senate, providing for arbitration.

The report of the Committee on Foreign Relations on the subject presented by Senator Lodge on August 15, which you enclosed, does not contain in full a copy of the treaty, but only quotes Article I and a part of Article III. Yesterday I received a complete copy of the proposed treaty, and am now able to answer your question definitely.

I had seen the very interesting discussion of the matter in the report of Mr. Lodge, and the minority views of Mr. Root, Mr. Cullom, and Mr. Burton, as also other discussions of the constitutional questions as they appeared in print, and had reached a general conclusion that the treaty did not invade any of the rights or limit any of the duties of the Senate, but I did not wish to reply to your inquiry until I should see the whole text of the treaty.

The Constitution provides that the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." This power of the President with (in effect) the advice and consent of two-thirds of the States of the Union is absolute, unlimited, and without qualification or reserve, except that it must not infringe upon the legislative power or the judicial power deposited by the same Constitution with Congress and the courts. No one contends that this proposed treaty makes any such infringement. A treaty, therefore, may concern questions that involve the good faith or the vital interests of the nation, as treaties about mere business relations and acts sometimes do; just as it happens between men where arbitrations or the established courts of justice settle, finally, all such disputes.

Article I of the proposed treaty limits the jurisdiction of the arbitral tribunal; either the permanent court at The Hague, or some other arbitral tribunal as the two nations may decide by special agreement made by the President, by and with the advice and consent of the Senate, and his Britannic Majesty's government; to differences arising "by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity."

The questions described in this article to be submitted to arbitration, it will be seen, are such as doubtless most nations which really favor arbitration instead of war would be willing to submit. The suggested difficulty is in determining whether a particular dispute falls within that description; in short, it is solely a question of the jurisdiction of the arbitral tribunal. If the two parties can decide this, there is little, if any, use in any preestablished tribunal at all, for if the parties agree that the subject of difference is one they would like to arbitrate they can create the tribunal for the occasion at once.

The simple *constitutional* question, then, is, Has the President, with the advice and consent of two-thirds of the Senate, the power to submit a question of the jurisdiction of a tribunal to any other authority whatever? If not, it must reside in him and the Senate alone and incommunicable.

It is certain that the clause in the Constitution quoted above contains no such limitation, either expressed or implied. The great statesmen who framed it wisely left the *whole* treaty-making power to the discretion of the President and two-thirds of the Senate. Every arbitral commission or treaty ever made does inherently submit this very question to the tribunal. The tribunal, when the hearing comes on, must first determine whether any particular claim presented is one that the tribunal was appointed to settle, and when decided it binds both parties unless by appeal to "the last reason of kings"—war.

When our last controversy with Great Britain—that of the so-called Alabama Claims—was tried by the Geneva Tribunal, she contended that our claim of compensation for the vast damage done to our commerce through her misconduct was not within the jurisdiction of the tribunal, and her contention was in some way sustained. I have no means, within reach here, of stat-

ing the details: the archives of the State Department, and perhaps of the Senate, should give them.

The present treaty has provided a preliminary and better way, by a commission of inquiry to determine such questions, among many others enumerated. This commission is to be composed of six members, three being subjects of Great Britain and three being citizens of the United States appointed by the President by and with the advice and consent of the Senate. *The decision of this commission must be reached only by the votes of at least five of the six members, so that at least two of the three United States members must agree in the decision in order to bind either nation.*

Thus, by the express terms of Article II of this treaty, the question of jurisdiction—that is, of what questions are to be submitted to the trial tribunal—must have the concurrence of at least two citizens of the United States chosen by the President and Senate for that purpose, and not by any foreigner whatever.

I am, therefore, with great respect, quite unable to agree with the majority of the Senate committee in its opinion that the Joint High Commission "may be composed wholly of foreigners," inasmuch as Article II of the treaty, in absolute terms, requires the very opposite, as above described; so that no question, jurisdictional or other, can be decided adversely to the United States without the consent of at least two of the three citizens, our own representatives. No right of the Senate can possibly be infringed unless it possesses the right to review every decision of an arbitral tribunal.

Although you have only asked my opinion on the constitutional aspects of the matter, I take leave to add that as a lover of peace between nations as well as among men, and fully recognizing in the present state of the world the sometimes grim and awful necessity of a resort to war, I most earnestly hope that the treaty will be advised by the Senate as proposed by the President. The always *possible* danger of some injustice in an arbitral judgment is infinitely less than the *certain* horrors of war both to the victor and the vanquished.

Very truly yours,

(Signed) GEORGE F. EDMUNDS.

The Commission of Inquiry Only a Part of the Machinery to Make the Treaties Effective.

By Ex-Chief Justice Marcus P. Knowlton, of the Massachusetts Supreme Court.

From a letter to the Springfield Republican, November 16.

It is a generally recognized principle of constitutional law that legislative authority cannot be delegated. It is plain that the treaty-making power conferred upon the President of the United States cannot be delegated. It is equally plain that the advice and consent of the Senate, required to make a treaty effective, must be given by the Senate itself, and not by another body or tribunal created for that purpose.

The important question under each of the two treaties is this: Does the treaty contain an unconstitutional delegation of the treaty-making power to the Joint High Commission of Inquiry? When a treaty has been entered into, with a view to the prevention of war by the submission to arbitration of all differences of a certain class defined in it, and when the treaty provides for the creation of a commission to determine whether a particular difference is within the terms of the treaty, under its definition, is the action of the commission, in making such a determination, the exercise of the treaty-making power by creating an addition to the original compact; or is it merely the working of a part of the machinery provided by the treaty to make it effective? Is it the making of a new treaty to be added to the old one, or is it an act of administration in execution of the original compact?

The constitutional question is precisely the same in principle as questions which have been decided many times by the Supreme Judicial Court of Massachusetts, in accordance with doctrines generally recognized in that and other courts. In this State statutes have often been passed, submitting to boards or commissions the determination of important questions of administration, without which determination the statute would be inoperative. Park commissioners have been authorized to make rules and regulations for the use of parks and to provide penalties for a breach of them. Similar authority has been conferred on the State board of health, on the board of harbor and land commissioners and on the railroad commissioners. Commissions have been created with power to make rules regulating the civil service, and to perform other important duties in the application of a statute to existing conditions. It has been held that such statutes do not involve a delegation of legislative power. Into some of the decisions considerations of local self-government have entered, but under others it has been decided that the power to be exercised was merely subsidiary to the substantive legislation in other parts of the act. Several, but not all, of the cases in Massachusetts, are cited in Codman against Crocker, 203 Massachusetts, 146-154. Similar laws and like adjudications may be found in other States. I have not been able to examine a collection of the treaties of the United States, but I think it probable that some may be found in which a board is created with large administrative or quasi-judicial powers, to be exercised under the treaty to give it effect, involving precisely the same principle that has been criticised in the pending treaties.

The substantive provision of the pending treaties, in this part, declares that all differences that are justiciable, within the definition, are to be submitted to arbitration. The method provided for determining what questions are within the definition is merely subsidiary. Action by the commission, in making the determination, is not an exercise of the treaty-making power, and the treaty does not purport to delegate such a power. It in no way interferes with the prerogatives of either the President or the Senate.

To adopt the opposite view would be equivalent to a decision that it is impossible for the United States to make a binding treaty with any country to submit to arbitration all disputed questions of a stated class; for under this assumption, no one but the President and the Senate could be permitted to determine whether a particular question belonged to the class, and in practical effect such a treaty would be merely an agreement that each question in dispute between the two countries should be considered by the President and Senate when-